IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13496 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIBHAI PATEL SAURASHTRA TRADING CO

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 13496 of 2003
MR TUSHAR MEHTA for Petitioner No. 1
MR SN THAKKAR for Respondent No. 1
MR JITENDRA MALKAN for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. By an order dated 4.10.2002 (Annexure-A), passed by the learned Single Member of the Customs, Excise and Gold (Control) Appellate Tribunal (for short "CEGAT"), West Zonal Bench, Mumbai, dismissed the appeal of the petitioner by a brief order, which is reproduced as under:-

"1. The applicants are absent and unrepresented despite Notice. There is no evidence of compliance with the Tribunal's stay order.

2. The Appeals are accordingly dismissed".

#. The same is challenged in this petition.

#. The matter was admitted and interim relief was granted in terms of para 11(b) by a brief reasoned order, which reads as under :-

"1. Amendment as per the Draft Amendment is allowed. The petitioner shall carry out the amendment within a period of one week. Learned counsel Mr.Tushar Mehta made a statement that the petitioner has already deposited Rs.50,000/= towards its liability due under Order-in-Appeal No.1064/2001/Commr(A)/Raj dated 9.11.2001 and the total liability under that order would be Rs.1,16,073/=. It was further stated by the learned counsel that the remaining amount of Rs.66,073/= is also being paid by the petitioner within a period of one week to establish the bona fides of the petitioner.

2. RULE returnable on 14.10.2003. Learned Standing Counsel Mr.D.N.Patel waived service for respondent No.1. Direct Service for the rest. Ad-interim relief in terms of para 11(b) in the meantime."

#. Learned counsel, Mr.Mehta for the petitioners submitted that in compliance of the aforesaid order dated 1.10.2003 passed by the Division Bench of this court, the petitioner has further deposited remaining amount of Rs.66,073/=.

#. Learned counsel Mr.Mehta for the petitioners further submitted that after filing the appeal with stay application before the CEGAT, the petitioner changed its address, therefore, it had not received the stay order. If it had received the stay order, then it would have been complied with the same. Therefore, the learned CEGAT was not justified in dismissing his appeal on the ground of non-compliance of the stay order. However, learned Standing Counsel, Mr.Malkan for the respondents submitted that the CEGAT was right in dismissing the appeal of the petitioner for non-compliance of the stay order. In support of his submission he has placed reliance on the judgment in case of Navin Chandra Chhotelal v. The Central Board of Excise and Customs reported in AIR 1971 SC 2280. It is true that in non-compliance of the stay order, the learned CEGAT can dismiss the appeal as held by the Hon'ble Supreme Court in Navin Chandra's case (supra). However, from the impugned order at Annexure-A, it appears that the appeal of the petitioner was dismissed mainly on the ground of absence of the petitioner-appeal before the CEGAT when the appeal was placed for hearing. In case of Viral Laminates Pvt. Ltd. vs. Union of India reported in 1998(100) E.L.T. 335 (Guj.) Division Bench of this court held that the appellate tribunal is not empowered to dismiss appeal for default and it is required to decide the appeal on merits. In view of the above, this petition is allowed and the impugned order at Annexure-A passed by the CEGAT dismissing the appeal of the petitioner for default in absence of the applicant is hereby quashed and set aside and the matter is remanded to the CEGAT for deciding the appeal afresh in accordance with law.

#. Before parting, we must state that it is always open to the CEGAT to pass fresh order in appeal for non-compliance of stay order, but while passing the same, the learned Tribunal shall have to keep in mind the case of the petitioner that it had never received such stay order because of change in the address and that under the interim order dated 1.10.2003 passed by the Division Bench of this court, it had earlier deposited Rs.50,000/= and later on deposited an amount of Rs.66,073/-, in all, Rs.1,16,073/=. The petitioner may produce the receipts thereof before the CEGAT. The remaining amount, if any, is required to be paid by the petitioner, as ordered by the CEGAT passed on stay application, then the same also may be considered while passing the fresh order on appeal.

With these observations, this petition is

allowed. Rule is made absolute. with no order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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